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How to Negotiate with Publishers and Keep Your Copyright

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How to Negotiate with Publishers and Keep Your Copyright

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Objectives

By the end of the workshop participants will be able to:

- Define the basics of copyright.
- Discuss why retaining copyright is useful for academic authors.
- Recognize the sections of a publishing contract.
- Correlate the sections of a publishing contract that make it relevant to each participants work.
- Plan to negotiate changes to a publishing contract that are advantageous to each participant.
- Outline several author addenda that exist for use with publishing contracts.
- Identify 2-3 sources of additional information on negotiating with publishers to keep copyright.

Outline

- Intro
- Overview of Copyright
- Understanding Copyright Transfer Agreements (CTA's)
- How to Negotiate
- Author Addenda for the CTA
- Book Contract Specifics
- Resources

Related Guides

- Citation Metrics for Promotion & Tenure

<https://guides.lib.uconn.edu/citationmetricsptr>

- Creative Commons Licenses

<https://guides.lib.uconn.edu/cclicenses>

- Evaluating Journal Quality

<https://guides.lib.uconn.edu/journaleval>



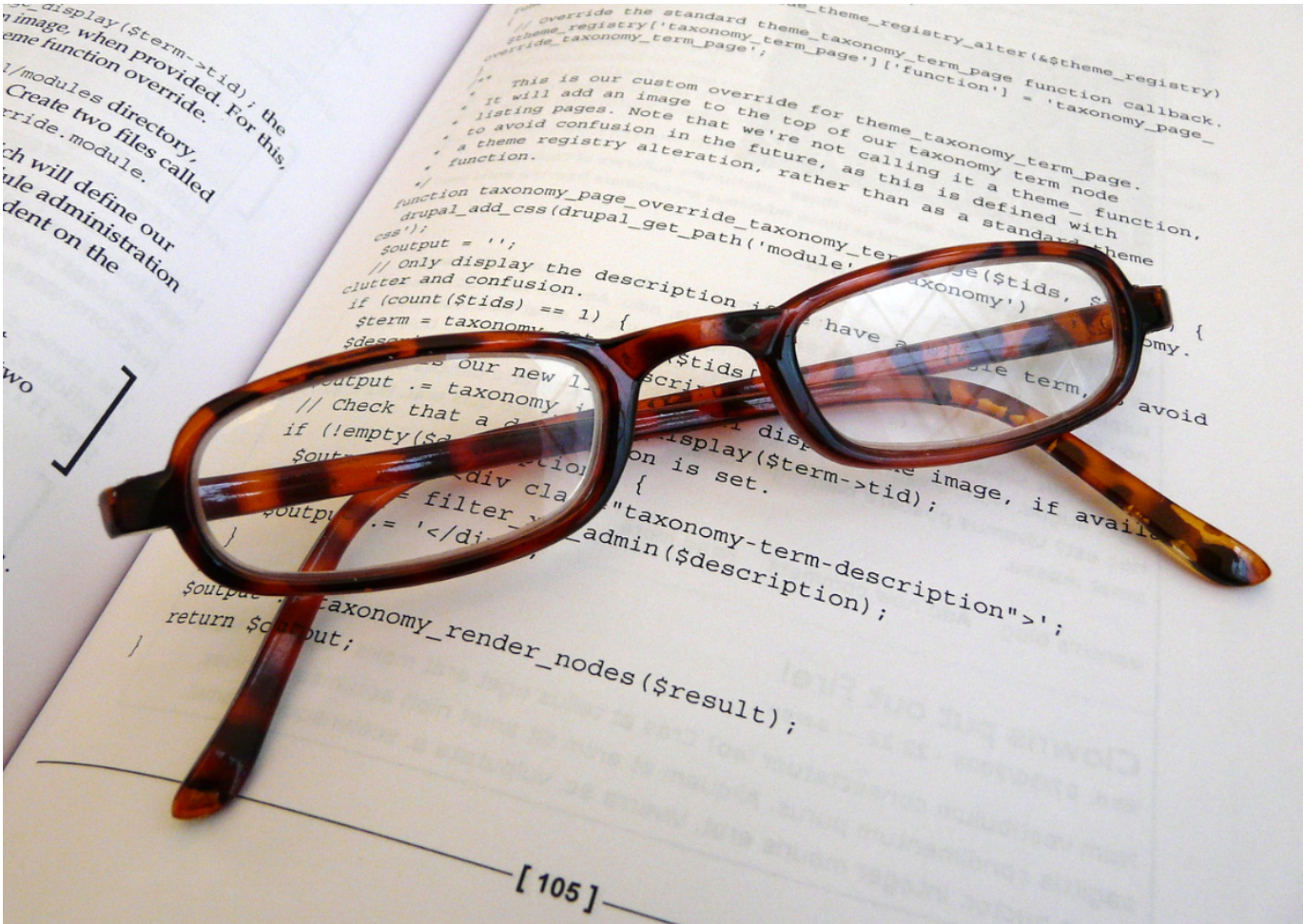
What is copyright?

- An exclusive set of rights granted to the creator
- Automatic for tangible creative work
- Not for facts or intangible ideas
- In the Constitution
- Legal versus moral rights



Copyright is a bundle of rights

- The right to reproduce the work
- The right to distribute the work
- The right to prepare a derivative of the work
- The right to perform the work
- The right to display work



Why Copyright Matters to Authors

- Your manuscript is your intellectual property
- Publisher is asking for permanent ownership
- Entire bundle of rights is not needed to publish and distribute

What do you lose when you give up copyright?

You may need permission to :

- Put the work in a study guide or it on place on e-reserve
- Use as a basis for future writing
- Post the full text on your website or in a repository
- Re-use graphs or figures in future work
- Give copies to friends and colleagues
- Create a compilation of your works
- Expand your work into a book or book chapter
- Retain patent and trademark rights of processes or procedures in the work

Any use you DO have is determined by the new copyright holder or under the Fair Use Exemption.



Why do we give up copyright?

- Tradition – academics have given up their copyright for decades or longer
- Authors don't want to deal with another task or problem
- Publishers seem to expect it
- Author fears losing contract if it is challenged
- Author doesn't like conflict

Negotiating Author Agreements

Advice, Examples, Exercises



Presenter

Michael Rodriguez

Collections Strategist

UConn Library





Copyright Transfer Agreements (CTA)

Common Assumptions

- I don't have time to negotiate with publishers.
- You need to be a lawyer to review an agreement.
- Publishers will reject my article if I try to negotiate.
- Publishers will not sue me or exploit me or my work.
- There are no repercussions if I transfer my copyright.

Approaching Negotiation

- Negotiate for the win-win
- Always ask (early and often!)
- Know your alternatives (BATNA)
- Pick your battles - how much do you care?
- Make a practical case for the publisher to say yes
- Be a good partner + build relationships with editors

Building Rapport

Test subjects were **four times** more likely to reach a mutually beneficial agreement AND feel good about the process if they engaged in **five minutes** of small talk over the phone before participating in a negotiation simulation via email.

[Rapport in Legal Negotiation](#) (2004)

Conducting Negotiation

- Ask courteously (email, phone) and explain what you want. Go back and forth with editor/production editor, often several times.
- Strike through or write in! Print out and mark up the agreement or use the comments and track changes in Word or Adobe. Offer alternative terms. Explain your reasoning succinctly.
- OR add addenda (such as the [SPARC Addendum](#)).



Examples of Agreements

Bad

Each Work shall be a “work made for hire” and, as such, Publisher shall own all right, title and interest in and to the Works, including all copyrights and other intellectual property rights therein and all renewals and extensions thereof, in all formats and media, whether presently known or hereafter developed, throughout the world in perpetuity. You waive all moral rights you have in the Works.

Better

You hereby grant to the Publisher (a) a worldwide, perpetual, royalty-free right and license to use the Works You agree that the foregoing license shall be exclusive until six (6) months following the publication of each Work by the Publisher and non-exclusive thereafter. You further grant Publisher the right to use your name, likeness, and/or biographical information in connection to each Work.

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Sections of a Typical CTA

- Copyright transfer + any rights assigned back to you
- Representations/warranties and indemnification
- Special terms, e.g., royalties or other obligations
- Disclosure (conflict of interest, funders, international ties)
- General provisions and signature block

Things to Watch for

- Surrender of patent and other intellectual property rights
- Competing works (especially for book contributions)
- Governing law, jurisdiction, binding arbitration
- Warranties and indemnification
- Merger

Things to Ask for

- A nonexclusive or term-limited license
- Moral rights (attribution not required under US law)
- Approval of all modifications to the manuscript
- Liability only for actual breaches only on actual knowledge
- Fair use analysis for reproducing third-party materials

Things to Ask for Too

- Scholarly sharing and self-archiving: Optimally be able to share final accepted version anywhere with no embargo
- Right to republish (e.g., article into chapter), reproduce in future publications and scholarly and teaching activities, and publish derivative works including translations
- Other rights depending on context

A Special Case: Coauthors

- Be on the same page with your co-authors early on
- Usually one author signs the agreement as agent for all
- If not the contributing author, be sure to communicate any concerns, ask to see license, etc. before it gets signed on your behalf! (This is also where you pick your battles.)

A Special Case: Open Access

- Many publishers do not charge APCs for open access: Annual Reviews, Open Library of the Humanities, SCOAP3, et al.
- Eligible to apply for a waiver? Check publisher's website. Must do so at submission. APCs often waived if the author is from a lower- or middle-income country or otherwise lacks funding.
- Sources: grants, subventions, library agreements or discounts

Walking through a CTA

Geophysics Transfer of Copyright Agreement

<https://bit.ly/35xPneu>

Exercise:

Review an Article CTA

Taylor & Francis Article Publishing Agreement

<https://bit.ly/2sAU1K8>

What looks good? Concerning? What are you unsure of?

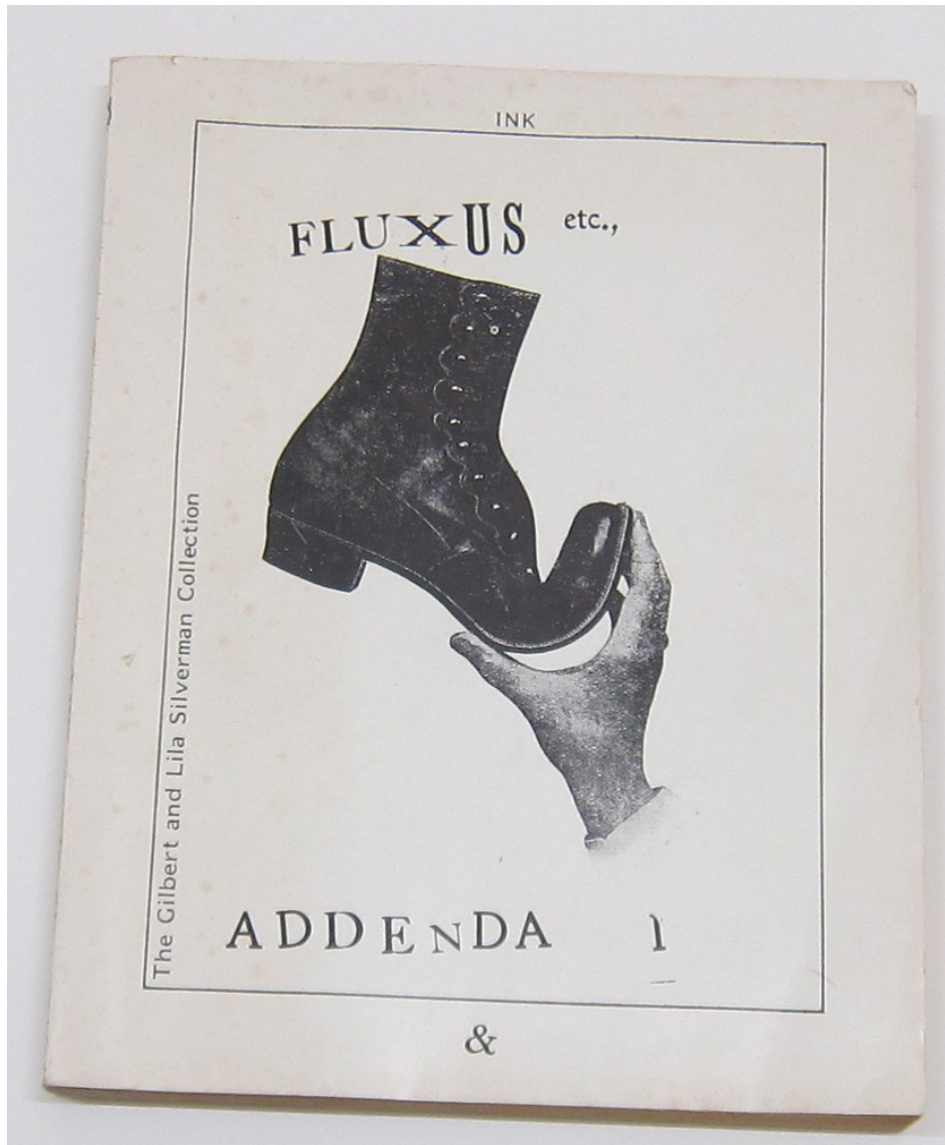
Questions?

Exercise: Review a Book CTA

Maven House Press Book Publishing Agreement

<https://bit.ly/3dIMRwd>

What looks good? Concerning? How is this book agreement different from, and similar to, the article agreement?



What are Author Addenda and what do they do?

- Legal instruments used to modify CTA's
- In existence for more than a decade
- Standard legal language tested over time
- Easy to use so little expertise is needed
- Known by publishers

Addenda for Authors

The major addenda available for use by scholarly authors are:

- SPARC Author Addendum to Publication Agreement
<https://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/>
- UConn Modified Author Amendment to Publication Agreement/
<https://lib.uconn.edu/research/scholarly-communication/author-rights/>
- Scholar's Copyright Addendum Engine
<https://labs.creativecommons.org/scholars>

SPARC Author Addendum to Publication Agreement

- Reserves rights to author to reproduce, distribute, perform, display, modify and authorize non-commercial uses by others.
- Requires publisher to provide pdf or similar format of **final article** without technical restrictions
- Establishes prior non-exclusive licenses such as to funder or to institution (faculty OA policy)

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Date

Date

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All of these Addenda:

- Keep non-exclusive rights for author (some scholarly, some non-commercial)
- Give author right to use published version of manuscript
- Acknowledge potential for existence of prior non-exclusive licenses, either for funder policies, institutional policies, or both

Some details differ in each *but the basics are the same*

You can use an addendum and strike out problematic language

You can use language from an addendum without using the actual document

Addenda give you options and legal language which work in your favor but you can use them however you wish

Book Contract Advice

Common advice for book contracts:

- Reversion/out of print clause
- Deadline for publication
- Competing works clause
- Approval of substantial changes
- Negotiate for royalties, don't accept first offer
- Retain copyright, give exclusive license instead
- Register copyright in your name within 3 months
- Reserve audit clause

Resources #1

Copyright

US Copyright Office <https://www.copyright.gov/>

Yale Univ Copyright Basics <https://copyright.columbia.edu/basics.html>

Columbia Univ Fair Use Checklist <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>

Cornell University Copyright Management for Authors <https://copyright.cornell.edu/authors>

Negotiating

[Harvard Program on Negotiation Reading List](#)

[How to Retain Ownership of Your Copyright when Dealing with Publishers](#)

Fisher, R., Patton, B., & Ury, W. (2011). *Getting to yes : Negotiating agreement without giving in*. 3rd ed. New York, New York: Penguin Books.

Contracts

Samples of Clauses Found in Contracts <https://www.law.columbia.edu/kernochan/keep-your-copyrights/contracts/clauses>

Resources #2

Addenda

SPARC Addendum <https://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/>

Author Amendment from UConn <https://lib.uconn.edu/research/scholarly-communication/author-rights/>

Scholar's Copyright Addendum Engine <https://labs.creativecommons.org/scholars>

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Questions?